

REMARKS

Claims 24, 27 and 28 have been amended, without prejudice or disclaimer. No new matter has been introduced. Support for the amended claims and the new claims is found throughout the specification, claims, and drawings as originally filed. Thirty-five (35) claims are pending and remain for consideration. Favorable reconsideration of the pending claims is respectfully requested.

Claim Objection

Claim 24 was objected to because of an informality: namely, in the third line of the claim, the claim language "a passage" should have read "the hole." The claim was amended accordingly. This amendment is neither made to avoid prior art nor required for purposes related to patentability.

35 U.S.C. §112 (First Paragraph)

Claims 1-11, 13-32 and 34 were rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement. The Examiner asserts that the claims contain subject matter that was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventors, at the time the application was filed, had possession of the claimed invention. In particular, the Examiner asserts that the limitation "wherein the assist handle is 'readily removable from the handle mount without the aid of tools,'" as recited in independent claims 1 and 19, and dependent claim 34, is not supported by the disclosure as originally filed. This rejection is respectfully transverse.

The following is a quotation from the appropriate paragraph of 35 U.S.C. §112 that forms the basis of the Examiner's rejection:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as *to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same*, and shall set forth the best mode contemplated by the inventor of carrying out his invention.

In accordance with 37 C.F.R. §1.75(d)(1):

The claim or claims must conform to the invention as set forth in the remainder of the specification and the terms and phrases used in the claims must find clear support or antecedent basis in the description *so that the meaning of the terms in the claims may be ascertainable by reference to the description.*

The policy underlying 35 U.S.C. §112, first paragraph is set forth in MPEP §2162, as follows:

To obtain a valid patent, a patent application must be filed that contains a full and clear disclosure of the invention in the manner prescribed by 35 U.S.C. 112, first paragraph.

In exchange for the patent rights granted, 35 U.S.C. 112, first paragraph, sets forth the minimum requirements for the quality and quantity of information that must be contained in the patent to justify the grant. [T]he patentee must disclose in the *patent sufficient information to put the public in possession of the invention and to enable those skilled in the art to make and use the invention.*

"[T]he 'essential goal' of the description of the invention requirement is *to clearly convey the information that an applicant has invented the subject matter which is claimed.*" *In re Barker*, 559 F.2d 588, 592 n.4, 194 USPQ 470, 473 n.4 (CCPA 1977) (emphasis added). Another goal is to put the public in possession of what the applicant claims as the invention. See *Regents of the University of California v. Eli Lilly*, 119 F.3d 1559, 1566, 43 USPQ2d 1398, 1404 (Fed. Cir. 1997), *cert. denied*, 523 U.S. 1089 (1998).

To satisfy the written description requirement, a patent specification must describe the claimed invention in sufficient detail that *one skilled in the art can reasonably conclude that the inventor had possession of the claimed invention.* See, e.g., *Moba, B.V. v. Diamond Automation, Inc.*, 325 F.3d 1306, 1319, 66 USPQ2d 1429, 1438 (Fed. Cir. 2003); *Vas-Cath, Inc. v. Mahurkar*, 935 F.2d at 1563, 19 USPQ2d at 1116.

An applicant shows possession of the claimed invention by describing the claimed invention with all of its limitations using such descriptive means as words, structures, *figures*, diagrams, and formulas that fully set forth the claimed invention.

Lockwood v. American Airlines, Inc., 107 F.3d 1565, 1572, 41 USPQ2d 1961, 1966 (Fed. Cir. 1997) (emphasis added). See also *Pfaff v. Wells Elecs., Inc.*, 525 U.S. 55, 68, 119 S.Ct. 304, 312, 48 USPQ2d 1641, 1647 (1998); *Eli Lilly*, 119 F.3d at 1568, 43 USPQ2d at 1406; *Amgen, Inc. v. Chugai Pharmaceutical*, 927 F.2d 1200, 1206, 18 USPQ2d 1016, 1021 (Fed. Cir. 1991) (one must define a compound by "whatever characteristics sufficiently distinguish it").

Information contained in any one of the specification, claims or drawings of the application as filed may be added to any other part of the application without introducing new matter. MPEP §2163.06.

The fundamental factual inquiry is *whether the specification conveys with reasonable clarity to those skilled in the art that, as of the filing date sought, applicant was in possession of the invention as now claimed.* See, e.g., *Vas-Cath, Inc.*, 935 F.2d at 1563-64, 19 USPQ2d at 1117 (emphasis added).

Paragraph [0016], on page 4, of the present application describes a mating relationship between the assist handle and the handle mount recited in the claims. This relationship is described as one wherein the assist handle is inserted into the handle mount and rotated to interlock (see paragraph [0017]) the assist handle and the handle mount. In Figs. 1 and 2, the assist handle is removed. In Figs. 3 and 4, the assist handle and the handle mount are interlocked. It is abundantly clear to any person skilled in the art to which the invention pertains that the assist handle is readily removable from the handle mount, without the aid of tools, by rotating the assist handle and lifting the assist handle from the handle mount.

Neither the statute nor the rules require the precise claim language be in the written description. The statute only requires that written description *enable any person skilled in the art to which the invention pertains to make and use the invention*, and it does. The rules require that the claims conform to the invention as set forth in the specification *so that the meaning of the terms in the claims may be ascertainable by reference to the description*, and it is. The essential goal of the description

requirement is met in that the description *clearly conveys the information that an applicant has invented the subject matter which is claimed.*

Although the precise claim language is not in the written description, the patent specification describes the claimed invention in sufficient detail that *one skilled in the art can reasonably conclude that Applicants had possession of the claimed invention at time the application was filed.*

As clearly set forth in MPEP §2163.06, the *information contained in the drawings of the application as filed may be added to any other part of the application without introducing new matter.* The use of the limitation "wherein the assist handle is 'readily removable from the handle mount without the aid of tools,'" as recited in claims 1 and 19 and dependent claim 34, as amended, is clearly supported by the disclosure as originally filed, and compliance with the written description requirement is met..

In view of the foregoing remarks and arguments, the rejection of the claims under 35 U.S.C. §112, first paragraph, is improper and should be withdrawn. Favorable reconsideration of the claims in this regard is respectfully requested.

35 U.S.C. § 112 (Second Paragraph)

Claim 27 was rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failure to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. The Examiner asserts the claim language "the partial annular groove" as recited in claim 27 lacks proper antecedent basis, thereby rendering the claim indefinite. Claim 27 was amended to depend from claim 25, which recites and thus provides proper antecedent basis for the claim language "the partial annular groove" recited in claim 27. This amendment is neither made to avoid prior art nor required for purposes related to patentability.

35 U.S.C. § 102

Claims 1-7 and 13 are rejected under 35 U.S.C. § 102, as anticipated by U.S. Patent No. 5,381,571, issued to Gabhart. This rejection is respectfully traversed.

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.

Verdegaal Bros. v Union Oil Co. of California, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). The identical invention must be shown in as complete detail as is contained in the claim. *Richardson v Suzuki Motor Co.*, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). The elements must be arranged as required by the applicant's claim. *In re Bond*, 15 USPQ2d 1566 (Fed. Cir. 1990).

Claim 1 recites an *assist handle*. Assist handles are well known, as set forth in the Background of the Invention, *for aiding occupants in entering and exiting a bed*. Gabhart does not disclose an *assist handle* but instead discloses guard rails 11, 13, 15, 17 (see line 14 of col. 2) and a closure 22 (see line 24 of col. 2). The guard rails are railings for guarding against trespass, to *prevent occupants from in entering and exiting a bed*, not for aiding occupants in entering and exiting a bed. The closure closes gaps between guard rails (see line 30 of col. 1). It *does not aid an occupant in entering and exiting the bed*. In the absence of some teaching of an *assist handle*, claim 1 should be allowable over Gabhart as written.

Claim 1 also recites a handle mount that is *adapted to be supported by a bed for supporting the assist handle for movement relative to the bed*. The closure in Gabhart is *not mounted to the bed* but rather is mounted to a locking mechanism 29 (see lines 23-57 in col. 2), which likewise is *not mounted to the bed* but instead is mounted to a guardrail. In the absence of some teaching of an assist handle *supported by a bed*, claim 1 should be allowable over Gabhart as written.

Claim 1 further recites an assist handle that is *readily removable* from a handle mount *without the aid of tools*. Gabhart fails to disclose an assist handle that is *readily removable* from a handle mount *without the aid of tools*. Instead, Gabhart discloses a locking mechanism 29 secured to a guard rail 11 by a fastener 25. The fastener is not

disclosed as being *readily removable without the aid of tools*, as required for the assist handle recited in claim 1. In the absence of some teaching of an assist handle that is *readily removable without the aid of tools*, claim 1 should be allowable over Gabhart as written.

Claims 2-7 and 13 depend from claim 1 and should be allowable for at least the same reason(s) as claim 1, as set forth above. In addition, claim 5 recites a grip *applied* to the assist handle. The guard rails disclosed by Gabhart do not have a grip *applied* thereto. In the absence of some teaching of a grip *applied* to the assist handle, claim 5 should be allowable over Gabhart in its own right.

Claim 6 recites a handle mount that includes a bracket for supporting the handle mount *by the bed*. The closure of Gabhart is supported by the locking mechanism. Hence, the locking mechanism most qualifies as a mount. However, it is not clear what feature of Gabhart the Examiner considers to be a bracket. Though the locking mechanism supports the closure, the locking mechanism is not supported by the bed.

In response to the foregoing argument, the Examiner relies upon Merriam Webster's Collegiate Dictionary (Tenth Edition), which defines a bracket as "a fixture projecting from a wall or column," and concluded that element 25 of Gabhart qualifies as a bracket in accordance with this definition, and as such, Gabhart anticipates claim 6. However, element 25 of Gabhart is a fastener, as clearly shown in the drawing (i.e., Figs. 4 and 5), and one of ordinary skill in the art of the invention would not interpret a fastener as *a bracket*. In this regard, Gabhart fails to disclose a bracket as recited in claim 6. In the absence of some teaching of a bracket for supporting the handle mount *by the bed*, claim 6 should be allowable over Gabhart in its own right.

Claim 7 recites a handle mount that includes a plate having a hole therein and a generally cylindrical sleeve supported relative to the plate with a passage therethrough that aligns with the hole. Gabhart does not disclose a plate with a hole and a sleeve supported relative to the plate with a passage that aligns with the hole. At best, Gabhart discloses a tubular casing 43 with a hole 41 and a tubular frame 23 with a

passage 49, 51 that can align with the hole in the tubular casing. However, neither the casing nor the frame is a plate.

In response to the foregoing argument, the Examiner argues that Gabhart teaches a plate having a hole therein, referring Applicants to Fig. 4, element 43 as a planar component having a tubular portion with a hole 41 formed therein, and a generally cylindrical sleeve 23 supported relative to the plate with a passage 51 therethrough that aligns with the hole. However, Gabhart does not anticipate claim 7 because the planar member referred to by the Examiner *does not have a hole that aligns with the passage 51 through the sleeve 23*. In this regard, claim 7 should be allowable in its own right.

Claim 13 recites a latch configuration that includes a receiver for receiving a member of the assist handle and a hole, and the member of the assist handle supports a locking pin that is releasably engageable with the hole to hold the member in the receiver. The Examiner argues that Gabhart teaches a latch configuration including a receiver 43 for receiving a member (a vertical portion of element 23) of an assist handle 22, wherein the member supports a locking pin 39 (when situated in the locked position as shown in Fig. 4) that is releasably engageable with the hole, as recited in claim 13. However, Gabhart does not anticipate claim 13 because Gabhart *does not disclose a locking pin supported by a member of an assist handle*, but rather shows a locking pin supported by a handle of a locking mechanism 29. Since Gabhart fails to disclose *a locking pin supported by an assist handle*, claim 13 should be allowable in its own right.

Claims 1 and 5-7 are rejected under 35 U.S.C. § 102, as anticipated by U.S. Patent No. 5,069,465, issued to Stryker et al. This rejection is respectfully traversed.

Claim 1 recites *an assist handle* for aiding an occupant in entering and exiting a bed. A handle mount, which is adapted to be supported by the bed, is provided for supporting the assist handle for movement relative to the bed. The assist handle is *readily removable* from a handle mount *without the aid of tools*.

Stryker fails to disclose an assist handle for aiding an occupant in entering and exiting a bed. Instead, Stryker discloses a push handle for aiding an attendant in maneuvering a bed 10. In addition, Stryker fails to disclose an assist handle that is *readily removable from a handle mount without the aid of tools*. Since Stryker fails to disclose an *assist handle* that is *readily removable from a handle mount without the aid of tools*, as set forth in claim 1, claim 1 should be allowable over Stryker as written.

Claims 5-11 depend from claim 1 and should be allowable for at least the same reason(s) as claim 1, as set forth above. In addition, claim 5 recites a grip *applied* to the assist handle. The push handles disclosed by Stryker do not have a grip *applied* thereto. In the absence of some teaching of a grip *applied* to the assist handle, claim 5 should be allowable over Stryker in its own right.

Claim 7 recites a handle mount that includes a plate having a hole therein and a generally cylindrical sleeve supported relative to the plate with a passage therethrough that aligns with the hole. Stryker fails to disclose a plate with a hole, and a sleeve supported relative to the plate with a passage that aligns with the hole. At best, Stryker discloses a casting 48, 29 with a hole 58 and a sleeve 61. However, the sleeve does not have a passage that can align with the hole in the casting. Alternatively, Stryker discloses a sleeve 61 with a central opening 62 and a metal part 83. However, the metal part does not have a passage that can align with the opening in the sleeve.

In response to the foregoing argument, the Examiner argues that Stryker teaches a plate having a hole 58 therein and a generally cylindrical sleeve 51 supported relative to the plate (through element 57) with a passage 62 therethrough that aligns with the hole. However, Stryker does not anticipate claim 7 because the hole 58 referred to by the Examiner *is not in a plate* but instead is in a frustoconical projection (see col. 5, lines 1 and 2). In this regard, claim 7 should be allowable over Stryker in its own right.

Claims 1, 5, 6, 13-16, 19, 23, 28-31 and 33-35 are rejected under 35 U.S.C. § 102, as anticipated by U.S. Patent No. 6,076,209, issued to Paul. This rejection is respectfully traversed.

Claim 1 recites an assist handle and a handle mount for supporting the assist handle for movement relative to a bed. The assist handle is *readily removable* from the handle mount *without the aid of tools*. Paul fails to disclose an assist handle. Instead, Paul discloses a side rail 200, which is well known in the art for guarding against trespass, to *prevent occupants from in entering and exiting a bed*, not for *aiding* occupants in entering and exiting a bed, like the assist rail set forth in claim 1. Paul also fails to disclose an assist handle that is *readily removable* from a handle mount *without the aid of tools*. In the absence of some teaching of an *assist handle* that is *readily removable without the aid of tools*, claim 1 should be allowable over Paul as written.

Claims 5, 6 and 13 depend from claim 1 and should be allowable for at least the same reason(s) as claim 1, as set forth above. In addition, claim 5 recites a grip *applied* to the assist handle. The side rail disclosed by Paul does not have a grip *applied* thereto. In the absence of some teaching of a grip *applied* to the assist handle, claim 5 should be allowable over Paul in its own right.

In addition, claim 13 recites a latch configuration that includes *a hole and a receiver* for receiving a member of the assist handle, wherein the member of the assist handle supports *a locking pin* that is releasably engageable with the hole to hold the member in the receiver. Claim 14 recites *a cam surface* for urging a pin in a first direction. Claim 15 recites a pin with *a ball end*. Claim 16 recites *a spring* for urging a pin in a second direction. Paul fails to disclose any of these features. In the absence of some teaching of these features, these claims should be allowable over Paul in their own right.

Claim 19 recites an assist handle and a handle mount for supporting the assist handle for movement relative to a bed. The assist handle is *readily removable* from the handle mount *without the aid of tools*. Paul fails to disclose an assist handle.

Instead, Paul discloses a side rail 200, which is well known in the art for guarding against trespass, to *prevent occupants from entering and exiting a bed*, not for *aiding* occupants in entering and exiting a bed, like the assist rail set forth in claim 19. Paul also fails to disclose an assist handle that is *readily removable* from a handle mount *without the aid of tools*. In the absence of some teaching of an *assist handle* that is *readily removable without the aid of tools*, claim 19 should be allowable over Paul as written.

Claims 23 and 28-32 depend from claim 19 and should be allowable for at least the same reason(s) as claim 1, as set forth above. In addition, claim 5 recites an *insulative grip applied* to the assist handle. The side rail disclosed by Paul does not have an *insulative grip applied* thereto. In the absence of some teaching of an *insulative grip applied* to the assist handle, claim 23 should be allowable over Paul in its own right.

Claim 28 has been amended to change "into" to "from" to correct a minor typographical error. This amendment is neither made to avoid prior art nor required for purposes related to patentability. Claim 28, as amended, recites *an interlock that permits the insertion of an assist handle into a handle mount when in a first position and the removal of the assist handle from the handle mount when in a second position*. Paul fails to disclose the features of the invention set forth in claim 28. In the absence of some teaching of these features, claim 28 should be allowable over Paul in its own right.

In addition, claim 29 recites *a detent and a pin*. Claim 30 recites *a ramp surface* for urging a pin in a first direction. Claim 31 recites *a spring* for urging a pin in a second direction. Paul fails to disclose any of these features. In the absence of some teaching of these features, these claims should be allowable over Paul in their own right.

Claims 33 and 35, like claims 1 and 19, recite an assist handle. Paul fails to disclose an assist handle but instead discloses a side rail. Claims 33 and 35 should be allowable for at least the same reason(s) as claims 1 and 19, as set forth above.

Claim 34 depends from claim 33 and should be allowable for at least the same reason(s) as claim 33. In addition, claim 34 recites an assist handle that is *readily removable* from the handle mount *without the aid of tools*. Paul fails to disclose an assist handle that is *readily removable* from a handle mount *without the aid of tools*, as set forth in claim 34. In the absence of such teaching, claim 34 should be allowable over Paul in its own right.

In paragraph 7, of the Official Letter, the Examiner, in fewer than three lines, rejects 16 claims (i.e., claims 1, 5, 6, 13-16, 19, 23, 28-31 and 33-35) in view of Paul, citing by column and line a portion of Paul that is dedicated to the disclosure of a side rail. After having thoroughly reviewed Paul, Applicants fail to see how Paul discloses any of the features set forth in the claims. It is respectfully requested that the Examiner specifically point out, clearly citing reference numerals, those features in Paul that the Examiner believes anticipate the features in the claims, or pass the claims on for condition for allowance.

Response to Amendment

The following is responsive to the Examiner's response to Applicant's amendment filed on November 29, 2004.

The Examiner asserts that it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed invention from a prior art apparatus satisfying the claimed structural limitation, citing *Ex parte Masham*, 2 USPQ2d 1647 (Fed. Cir. 1987).

Upon a close review of *Masham*, the Examiner will find that Masham claimed in the preamble an apparatus "for mixing flowing developer material." The court held that the *preambular recitation* of the claim language "for mixing flowing developer material" should not be given patentable weight. All of the claims recite an assist handle assembly *for use on an articulating bed*. However, in the body of the claims, there is recited a handle mount for supporting the assist handle for movement relative to the bed." *Masham* does not address the use of such language in the body.

Applicants respectfully request that the Examiner clarify the claim language to which he intends *Masham* to apply.

The Examiner also asserts that the recitation of an assist handle that is "*readily removable* from a handle mount *without the aid of tools*" does not provide sufficient structure. It has been held that *structural attributes* of interrelated component parts of a claimed assembly can be defined in *functional terms*, such as with the use of the terms "*readily removable from a handle mount without the aid of tools*," as set forth in the claims of the present application. There is *nothing inherently wrong with defining some part of an invention in functional terms*. A functional limitation is an attempt to define something by what it does, rather than by what it is. Functional language *must be evaluated and considered* just like any other limitation of the claim, for *what it fairly conveys to a person of ordinary skill in the pertinent art in the context in which it is used*. See *In re Venezia*, 530 F.2d 956, 189 USPQ 149 (CCPA 1976), where it was held that limitations such as "members adapted to be positioned" *serve to precisely define structural attributes* of interrelated component parts of the claimed assembly; MPEP §2173.05(g).

With regard to the specific claim language "*readily removable ... without the aid of tools*" being dependent upon the particular user, it has been held that similar claim language "removably connecting" means separable *without need for tools*. See *Burke Inc. v. Everest & Jennings Inc.* 29 USPQ2d 1393 (CAFC 1993). Such language has been held to meet the requirements of 35 USC 112, second paragraph. In the same way, the language "*readily removable ... without the aid of tools*" meets the requirements of 35 U.S.C. §112, second paragraph. No further structure is required.

In view of the forgoing, the recitation of an assist handle that is "*readily removable* from a handle mount *without the aid of tools*" meets the requirements of 35 U.S.C. §112 and defines of the claimed invention over the cited references.

Claims Outstanding

At the bottom of page 5 of the Official Letter, the Examiner *agrees* with Applicants' arguments concerning the novelty of claim 17 in view of Gabhart and the novelty of claims 8-11 in view of Stryker. As a consequence, the Examiner has *withdrawn* his rejection of these claims. Since none of the cited references discloses the invention set forth in these claims, the claims should be allowable as written.

The Examiner has not addressed the merits of claim 24-27, which are believed to be allowable as presented. Favorable reconsideration of these claims is respectfully requested.

Allowed Subject Matter

Applicants acknowledge that claim 12 has been allowed.

Final Office Action

The Examiner made the Office Action Final, asserting that Applicants' amendment necessitated new grounds of rejection. However, the Final Office Action is improper for the following reasons.

Claims 24-27 remain pending and do not stand rejected or allowed.

The Examiner agrees with Applicants arguments concerning the rejection of claims 14 and 17, and has withdrawn his rejection of the claims. Similarly, the Examiner agrees with Applicants arguments concerning the rejection of claims 8-11, and has withdrawn his rejection of these claims. As a consequence, claims 8-11 and 17 remain pending and do not stand rejected or allowed.

Finally, the arguments presented in favor of the novelty of claim 14 were not based on any amendment to the claim but instead pointed out novel features that were present in the claim when the claim was originally filed. Consequently, claim 14 was allowable, as originally filed, over Gabhart and Stryker in its own right. Hence, the rejection of claim 14 over Paul was not necessitated by an amendment. Consequently, a final rejection of this claim is not proper.

Conclusion

In view of the amendments and above remarks, it is believed that the application is in condition for allowance. Accordingly, a Notice of Allowance is respectfully requested.

Telephone Interview

As a final matter, if the Examiner has any suggestions concerning different claim phraseology that, in the opinion of the Examiner, more accurately defines the present invention, prior to issuance of another Office Action, Applicants' attorney requests the courtesy of a telephone interview at the Examiner's earliest convenience to discuss the application. Applicants' attorney may be contacted at (419) 255-5900.